

**REMARKS**

Applicants acknowledge with appreciation the telephone interview between Applicants' Representative and the Examiner on January 2, 2008. The substance of the interview is discussed below.

During the interview, Applicants' Representative explained that the application describes trading of interests in auction and non-auction transactions in the same system, where a proposal for a non-auction transaction is disclosed to others for outright purchase or sale, and is also identified as an entry in an auction, but *not* disclosed to others as such before the deadline for deciding the auction.

The application refers to this as "commingling" proposals for both auction and non-auction (or straight or live) transactions in the same system, (Abstract, lines 3-4; ¶ [0009], lines 6-8; ¶ [0012], lines 1-4). A proposal for a non-auction transaction, entered independently of an auction proposal, is made available to users of the system (¶ [0122], lines 1-3), and may be purchased or sold outright (¶ [0087], lines 3-4 and ¶ [0112]). At the same time, the independently entered non-auction transaction can be identified as an entry in the auction, but is not disclosed to others as an auction entry before the deadline for deciding the auction. (¶ [0122]). The auction is conducted after the deadline using the proposed non-auction transaction as an entry (assuming that the proposed non-auction transaction was not purchased or sold outright prior to the deadline). (¶ [0115])

As described in ¶ [0115]:

Potential entries include not only bids/offers directed by the responding trader at the auction proposal, but also "live" bids and offers, that is, active bids and offers for straight purchase of the same or sufficiently identical financial interests, entered independently of the auction proposal by other traders.

Paragraphs [0120] through [0127] and Fig. 39 describe a method for deciding auctions which may include a non-auction item.

Summarizing, users may enter into the same system independently of each other proposals for auction and non-auction items, and users may transact a non-auction proposal independently of an auction, as well as transacting auction proposals in the same system. For example, if a non-auction proposal that is (a) disclosed to others for outright purchase or sale and (b) entered into an auction without disclosing as an auction entry before the auction deadline, is not transacted prior to the deadline, then it can be transacted in the auction.

As generally described in the application, a deadline is set for deciding the auction. Prior to the deadline, bids and offers may be entered for participating in the auction, and after the deadline, the auction is conducted, i.e., decided. See, e.g., ¶¶ [1004] – [0112] with respect to entering responses to participate in an auction, and ¶¶ [0125] – [0127] with respect to deciding the auction.

Claim 1 claims a method of facilitating trading of financial interests over a network using a system comprising a plurality of user computers and at least one other computer. The method as defined in claim 1 comprises:

the plurality of user computers receiving from the at least one computer over the network

(a) terms for a proposed auction in at least one financial interest and an associated deadline for deciding the proposed auction and

(b) terms for at least one proposed non-auction transaction in the at least one financial interest which is identified in memory accessible by the at least one computer as an entry in the proposed auction but is not disclosed as an entry in the proposed auction to the plurality of user computers prior to the deadline.

Thus, terms for a proposed auction in a least one financial interest **and** terms for at least one proposed non-auction item are both received by user computers. This allows a user computer to participate in the auction and/or purchase or sell the non-auction item outright. However, the non-auction transaction is not disclosed as an entry in the proposed auction prior to the deadline.

Claim 1 also provides:

after the deadline, the at least one computer deciding the proposed auction with the proposed non-auction transaction as an entry if the proposed non-auction item remains an entry in the proposed auction after the deadline.

Thus, after the deadline, when the auction is to be decided, the auction is decided with or without the proposed non-auction item depending upon whether it is still an entry in the auction.

The October 18, 2007 Office Action maintains the rejection of claims 1-4, 38 and 42-44 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No.5,915,209 (“Lawrence”) in view of BuyTextile.com (“BuyTextile”). Applicants request reconsideration and withdrawal of this rejection for the reasons presented at the interview and summarized herein.

The October 18, 2007 Office Action recognizes that Lawrence does not disclose the claimed subject matter relating to non-auction transactions, and contends that BuyTextile discloses this subject matter missing from Lawrence. (Top of page 3 of Office Action.) However, Applicants disagree with this, as explained during the interview.

BuyTextile.com provides that a fabric entered into an auction can also be purchased outright at the “buy it now price.” However, the auction item is disclosed as a non-auction item to auction participants prior to the deadline for deciding the auction. BuyTextile reveals to all participants prior to the deadline for deciding the auction that the auction item can be purchased outright, and the buy it now price at which it can be purchased. For example, please refer to the dialog box at the top of page 3 of BuyTextile.com.

In contrast, in the method defined in claim 1, a proposed a non-auction transaction that can be purchased or sold outright is disclosed to potential purchasers, but not as an auction entry in a proposed auction before the deadline for deciding the auction. Therefore, participants decide (a) whether or not to transact the non-auction item without knowledge before the auction deadline has passed that this proposed transaction may also be an entry in the auction, and (b) whether or not to participate in the proposed auction without knowledge that the non-auction transaction may actually be an entry in the proposed auction.

Claim 1 has been amended herein to point out that the proposed non-auction transaction is received and identified as an entry in the proposed auction prior to the deadline for deciding the auction, but the proposed non-auction transaction is not disclosed as an entry in the proposed auction prior to the deadline for deciding the proposed auction.

It is submitted that claim 1 is allowable over Lawrence and BuyTextile.com because together they do not claim the subject matter of claim 1, as pointed out above.

Based on the discussion at the interview and above, it is submitted that the other independent claims (claims 38 and 45) are also allowable over Lawrence and BuyTextile.com and the prior art of record. As for the dependent claims, since each is dependent on an independent claim discussed above, it is submitted that they are allowable as well.

Since each dependent claim is also deemed to define an additional aspect of the invention, the individual reconsideration of the patentability of each on its own merits is respectfully requested even though, for reasons of brevity, such patentability is not separately argued herein. However, Applicants reserve the right to rely on and argue patentability of the subject matter of the dependent claims in this or another proceeding.

Similarly, because Applicants maintain that all claims are allowable for at least the reasons presented hereinabove, in the interests of brevity, this response does not comment on each and every comment made by the Examiner in the October 18, 2007 Office Action. This should not be taken as acquiescence of the substance of those comments, and Applicants reserve the right to address such comments.

**Closing**

In view of the above, it is submitted that all pending claims are allowable, and that the application is in condition for allowance. Applicant respectfully requests early reconsideration and allowance of the application with claims 1, 3, 4, 38 and 43- 47.

The Examiner is respectfully invited to contact Applicants' Representative by telephone on any issue which the Examiner believes is suitable for possible resolution or clarification by telephone.

Respectfully submitted,

  
\_\_\_\_\_  
Frank J. DeRosa  
Reg. No. 26,543

Date: March 31, 2008

**Customer No. 20999**  
Frommer Lawrence & Haug LLP  
745 Fifth Avenue  
New York, NY 10151  
Tel. (212) 588-0800  
Fax (212) 588-0500